

## **Rule 5, Ariz. R. Crim. Proc.**

### **PRELIMINARY HEARING – Scope of preliminary hearing.....Revised 12/2009**

“The purpose of a preliminary hearing and a grand jury proceeding is the same. They are to determine whether there is probable cause to believe the individual committed an offense.” *State v. Neese*, 126 Ariz. 499, 502, 616 P.2d 959, 962 (App. 1980). Accordingly, a preliminary hearing is limited in scope. It is not an opportunity for discovery, nor is it a trial on the merits. Instead, the scope of a preliminary hearing is restricted to material issues as to whether or not probable cause exists to bind the defendant over to Superior Court for trial. Rule 5.3(a), Ariz. R. Crim. P.; see also *State v. Clark*, 126 Ariz. 428, 431-32, 616 P.2d 888, 891-92 (1980). In *Clark*, the defense sought to question a confidential informant prosecution witness about his name and address. On appeal, the Court stated that it was not error to limit cross-examination at the preliminary hearing to probable cause issues:

It is not the purpose of the preliminary examination to provide a means for the discovery of evidence. *State v. Bojorquez*, 111 Ariz. 549, 535 P.2d 6 (1975). The Rules of Criminal Procedure provide a separate and adequate means for the defense to discover the evidence.

*Id.* at 432.

Because the preliminary hearing is not a trial on the merits, certain rules that apply at trial – such as the *corpus delicti* rule – do not apply at the preliminary hearing stage. In *State v. Jones ex rel. County of Maricopa*, 198 Ariz.

18, 6 P.3d 323 (App. 2000), the defendant argued during the preliminary hearing that there was insufficient proof of the *corpus delicti* to admit evidence of the defendant's confession. The Court of Appeals stated that the defendant's challenge was premature because the *corpus delicti* rule applies only at trial, stating, "The purpose of a preliminary hearing is to determine whether probable cause exists to hold the person charged with the crime(s) to answer the alleged charges, not to decide the guilt of the accused." *Id.* at 23, ¶ 15, 6 P.3d 323, 328.